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TO AMEMBASSY ADDIS ABABA

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FOL TEL SENT ACTION GENEVA FROM SECSTATE 20 AUG 73 REPEATED TO YOU

QTE S E C R E T STATE 165120

E.O. 11652: GDS TAGS: PBOR

SUBJ: LOS - ISLANDS AND HISTORIC WATERS

REF: GENEVA 4280

- 1. ISLAND AND HISTORIC WATERS ISSUES DISCUSSED BELOW PURSUANT TO REQUEST REFTEL. EXCHANGE OF NOTES ON PETER THE GREAT BAY SENT IN STATE 163765.
- 2. HISTORIC WATERS. WITH RESPECT TO HISTORIC BAYS, U.S. POSITION HAS BEEN AS FOLLOWS. TO MEET THE INTERNATIONAL STANDARD FOR ESTABLISHING SUCH CLAIMS, A STATE MUST SHOW: A) OPEN, NOTORIOUS AND EFFECTIVE EXERCISE OF AUTHORITY OVER THE BAY BY THE COASTAL NATION; B) CONTINUOUS EXERCISE OF THAT AUTHORITY OVER A CONSIDERABLE PERIOD OF TIME; C) ACQUIESCENCE BY FOREIGN NATIONS IN THE EXERCISE OF THAT AUTHORITY. (APRIL, 1973 BROWER LETTER TO FRIZZELL).
- (A) ON FIRST FACTOR UNITED STATES' POSITION IS THAT A STATE MUST INDICATE ITS INTENT TO ACT AS SOVEREIGN. SECRET

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TO DO THIS ACTS OF AUTHORITY MUST BE EXERCISED IN

OPPOSITION TO THE RIGHTS WHICH FOREIGN NATIONS COULD EXERCISE IN THE ABSENCE OF A CLAIM. ALTHOUGH THE INTENT TO EXERCISE AUTHORITY MAY BE EXPRESSED BY LOCAL LEGISLATION OR PROCLAMATION, AUTHORITY MUST ALSO BE EFFECTIVELY EXERCISED BY DEEDS UNDERTAKEN IN THE AREA OF THE CLAIM.

TO THE EXTENT THAT ACTION ON THE PART OF THE STATE IS NECESSARY TO MAINTAIN ITS SOVEREIGNTY OVER THE AREA, SUCH ACTION MUST BE TAKEN. (COOK INLET POST-TRIAL BRIEF.) BASED ON UNITED NATIONS SECRETARIAT STUDY, JURIDICAL REGIME OF HISTORIC WATERS, INCLUDING HISTORIC BAYS (A/CN.4/143) (1962), UNITED STATES RECOGNIZES THAT HISTORIC TITLE MAY BE ESTABLISHED OVER TERRITORIAL SEA AS WELL AS INTERNAL WATERS AND HAS CONTENDED THAT THE SCOPE OF THE CLAIM IS ESTABLISHED BY THE SCOPE OF THE AUTHORITY EXERCISED. THUS, TO ESTABLISH HISTORIC CLAIM TO INTERNAL WATERS, STATE MUST OPPOSE RIGHTS WHICH A FOREIGN NATION COULD EXERCISE IN THE TERRITORIAL SEA. FOR INSTANCE, IF CLAIMANT STATE HAS ALLOWED INNOCENT PASSAGE THROUGH THE WATERS CLAIMED, IT COULD NOT ACQUIRE AN HISTORIC TITLE TO THESE WATERS AS INTERNAL WATERS, ONLY AS TERRITORIAL SEA.

- (B) THE EXERCISE OF AUTHORITY MUST HAVE BEEN EXERCISED CONTINUOUSLY OVER A SUFFICIENTLY LONG PERIOD OF TIME TO HAVE DEVELOPED INTO A USAGE. (1969 MEEKER LETTER TO KASHIWA.) THE PASSAGE OF A CONSIDERABLE AMOUNT OF TIME IS REQUIRED. THIS IS A FACTUAL QUESTION AND DEPENDS UPON THE CIRCUMSTANCES OF THE PARTICULAR CASE. (JURIDICAL REGIME).
- (C) ON THIRD FACTOR (ATTITUDE OF FOREIGN NATIONS)
  THERE HAS BEEN QUESTION WHETHER A SHOWING OF ACQUIESCENCE IS REQUIRED OR WHETHER THE MERE ABSENCE OF
  OPPOSITION IS SUFFICIENT. U.S. HAS TAKEN POSITION
  THAT AN ACTUAL SHOWING OF ACQUIESCENCE IS REQUIRED.
  (1969 MEEKER LETTER TO KASHIWA). THIS POSITION IS
  REFLECTED IN U.S. NOTE OF MARCH 6, 1958 TO U.S.S.R.
  REGARDING PETER THE GREAT BAY. THAT NOTE STATES A
  REQUIREMENT OF A DEGREE OF ACCEPTANCE ON PART OF REST
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OF THE WORLD TO JUSTIFY THE U.S.S.R. CLAIM. IN
ORDER TO RECEIVE THE REQUIRED ACCEPTANCE BY OTHER NATIONS,
THE COASTAL STATE'S ACTS OF SOVEREIGNTY MUST ALSO BE
KNOWN TO FOREIGN NATIONS. IN ALASKA CASE WE HAVE
CONTENDED THAT FOREIGN FISHING ACTIVITY IN THE AREA
IS PROOF OF LACK OF ACQUIESCENCE. WE HAVE ALSO CONTENDED
THAT THE CONSENT OR OPPOSITION OF SOME STATES (I.E.
NEIGHBORING OR INTERESTED STATES) MAY BE MORE IMPORTANT

IN ESTABLISHING ACQUIESCENCE THAN THE ACTIONS OF UNINTERESTED STATES.

- 3. THERE IS NO EVIDENCE HERE THAT U.S. HAS TAKEN POSITION ON KENYAN HISTORIC BAY CLAIM. TEXTS OF PETER THE GREAT BAY NOTES ARE SENT SEPTEL.
- 4. AS OPPOSED TO HISTORIC BAYS, THE BROADER TERM HISTORIC WATERS MAY ALSO INCLUDE WATERS A) CONTAINED WITHIN OTE FRINGING ISLANDS UNOTE AND THE MAINLAND WHICH COULD BE BUT MAY NOT HAVE BEEN CONNECTED BY STRAIGHT BASELINES, B) ARCHIPELAGO WATERS, OR C) IN ISOLATED SEAS BOUNDED BY A SINGLE STATE OR A LIMITED NUMBER OF STATES. AN EXAMPLE OF QTE CATEGORY A UNQTE WOULD BE THE SHALLOW WATERS CONTAINED BETWEEN THE FRISIAN ISLANDS AND THE ADJACENT DUTCH, GERMAN AND DANISH MAINLANDS. THE CLAIMS OF THE PHILIPPINES, IN-DONESIA AND ECUADOR (THE GALAPAGOS) TYPIFY QTE CATEGORY B UNQTE WATERS. SOVIET CLAIMS TO THE SEAS OF THE ARCTIC FORM QTE GENERAL GROUP C UNQTE WATERS. WHILE MARITIME NATIONS HAVE GENERALLY ACCEPTED HISTORIC BAYS AND HISTORIC WATERS OF THE FRISIAN ISLANDS VARIETY, NO STANDARD HAS BEEN DEFINED FOR THE WATERS WITHIN AN ARCHIPELAGO--A VARIETY OF CIRCUMSCRIBING, INSULAR STRAIGHT BASELINES--OR FOR THE ISOLATED, CLAIMED NATIONAL SEAS. JURIDICAL REGIME (PP. 17, 67) SUGGESTS THAT THE LEGAL STATUS OF THE VARIOUS TYPES OF HISTORIC WATERS MAY VARY ACCORDING TO THE NATURE OF THE HISTORIC EXERCISE OF SOVEREIGNTY. ACCORDING TO THIS STUDY, THE DOMINANT OPINION SEEMS TO BE THAT HISTORIC BAYS. THE COASTS OF WHICH BELONG TO A SINGLE STATE, ARE INTERNAL WATERS. HOWEVER, BAYS BORDERED BY TWO OR MORE SECRET

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STATES AND OTHER HISTORIC WATERS MAY ALSO BE INTERNAL WATERS IF THE SOVEREIGNTY EXERCISED OVER THEM IN THE COURSE OF DEVELOPMENT OF THE HISTORIC TITLE WAS SOVEREIGNTY COMMENSURATE WITH THAT NORMALLY EXERCISED OVER INTERNAL WATERS. IN GENERAL, THIS STUDY RECOGNIZES THAT AN HISTORIC TITLE CAN EXIST TO WATERS OTHER THAN BAYS. HOWEVER THE STUDY DOES NOT DISCUSS OR DIFFERENTIATE BETWEEN THE VARIOUS TYPES OF HISTORIC WATERS - I.E. ARCHIPELAGOS, ISOLATED SEAS.

5. NO EVIDENCE OF A FORMAL U.S. POSITION ON HISTORIC WATERS EXCEPT AS INDICATED ABOVE WITH RESPECT TO HISTORIC BAYS HAS BEEN FOUND. U.S. MAY HAVE TAKEN POSITION IN 1964 CAB CASE (CAB V. ISLAND AIRLINES) ON QUESTION OF WHETHER WATERS BETWEEN HAWAIIAN ISLANDS

OUTSIDE 3 MILE LIMIT WERE HIGH SEAS OR HISTORIC WATERS. (U.S. DISTRICT COURT, HOLDING THAT AIRLINE WAS FLYING INTERSTATE AND WAS THEREFORE SUBJECT TO CAB JURISDICTION, FOUND THAT WATERS WERE HIGH SEAS BECAUSE NEITHER U.S. NOR KINGDOM OF HAWAII HAD MET REQUIREMENTS OF OPEN, NOTORIOUS CLAIMS TO SOVEREIGNTY, OBJECTIVE ACTS, AND CONTINUITY OF USE.) DO NOT HAVE BRIEFS IN THIS CASE. MOST LIKELY U.S. POSITION WAS CONSISTENT WITH HISTORIC BAY POSITION DESCRIBED ABOVE.

- 6. ISLANDS. HODGSON REVIEWED GENERAL QUESTION OF ISLANDS IN 91 PAGE PAPER ISLANDS: NORMAL AND SPECIAL CIRCUMSTANCES FOR LOS INSTITUTE IN JUNE. COPIES OF PAPER HAVE CIRCULATED MEMBERS OF DELEGATION FOR NEARLY A YEAR. COPIES OF UNEDITED DRAFT IN GENEVA. CORRIGENDA FOLLOW AT END OF TELEGRAM. PAPER DISCUSSES ISLANDS IN GREATER DETAIL AND PROPER CONTEXTS THAN POSSIBLE IN TELEGRAM. ANTICIPATED TO REVISE THE STUDY FOR THE PAPERS OF SPECIAL DELIMITATION PROBLEMS BY NOVEMBER 20 DEADLINE.
- 7. ISLAND ISSUE MORE MANAGEABLE WHEN DIVIDED INTO COMPONENT PARTS WHICH NEED NOT BE TREATED IN IDENTICAL MANNERS. ISLANDS AFFECT SEAWARD LIMITS TERRITORIAL SEA, BOUNDARIES BETWEEN ADJACENT AND OPPOSITE STATES, SEAWARD LIMITS OF RESOURCE ZONE BASED UPON DISTANCE SECRET

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CRITERION, AND BOUNDARIES BETWEEN ADJACENT AND OPPOSITE STATES AS EXTENSIONS OF TERRITORIAL SEA BOUNDARIES.

8. TERRITORIAL SEA LIMITS BASED UPON SECURITY AND THE NEED FOR GREATER INFLUENCE BY ISLANDS RELATES THERETO. HOWEVER, WITH A 12-MILE TERRITORIAL SEA AS A STANDARD, A VERY SMALL ISLAND (C. 1 SQ. MILE OR LESS), ONLY GENERATES A TERRITORIAL SEA OF APPROXIMATELY 450 SQ. MI. IF SITUATED MORE THAN 12 MILES FROM ALL OTHER BASE-POINTS. ISLAND OF APPROXIMATELY 1,200 SO. MILES (40 MILES IN DIAMETER) CREATES A TERRITORIAL SEA OF AN IDENTICAL 1.200 MILE AREA. AS ISLAND SIZE INCREASES. LAND/TERRITORIAL SEA RATIO INCREASES. SMALLEST ISLANDS THEREFOR LIKELY TO CREATE GREATEST IMPRESSION OF INEQUITY DUE TO LAND/SEA RATIO OF 1:450 AND SMALLER. IN SPITE OF THIS FACT, AN AVERAGE COASTAL STATE'S TERRITORIAL SEA (MOROCCO 10,000 SQ. MI; TANZANIA 8,600 SQ. MILE, NIGERIA 4,600 SQ. MI.) NOT INFLUENCED GREATLY BY ONE OR TWO ADJACENT ISLANDS OF SECOND STATE. AS A CONSEQUENCE, CITED PAPER STATES THAT ISLANDS SHOULD GENERALLY NOT BE DISREGARDED IN RELATION TO THE TERRI-TORIAL SEA AND THE LIMITS BETWEEN OPPOSITE AND ADJACENT

STATES. THREE AREAS OF RELATIVE INEQUITY EXIST, HOWEVER. IN TWO INSTANCES - PAPUA NEW GUINEA AND KUWAIT - A SINGLE LINE OF ONSHORE ISLANDS BELONG OR ARE CLAIMED BY ADJACENT STATES WHICH WOULD MASK A VERY LARGE ELEMENT OF THE NATIONAL SEA. IN THE THIRD INSTANCE - GREECE AND TURKEY - A LARGE NUMBER OF GREEK ISLANDS FRINGE AND EXTEND FROM THE TURKISH COAST IN A SPECIFIC AREA, I.E., ONLY AEGEAN SEA COAST SINCE BLACK SEA AND SOUTHERN MEDITERRANEAN COASTS DO NOT HAVE SAME SITUATIONS. THESE THREE CONDITIONS MAY CONSTITUTE A SERIOUS INEQUITY

BUT THE ALTERNATIVES ARE ILLOGICAL; PNG, FOR EXAMPLE, HAS REQUESTED AUSTRALIA CEDE THE COASTAL ISLANDS OR GIVE THEM NO TERRITORIAL SEA, CONTIGUOUS ZONE OR SEABED.

9. ALTERNATIVE TO FULL TERRITORIAL SEA FOR GREEK (AND TURKISH) ISLANDS DOES NOT APPEAR VIABLE. THE ENTIRE AEGEAN SEA DOTTED WITH LARGE GREEK ISLANDS WHICH CAN NOT SECRET

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LOGICALLY BE DISCOUNTED DUE TO THEIR NUMBER, ADJACENCY, SIZE, POPULATION, ETC. THE ONLY REALISTIC ALTERNATIVE APPEARS TO BE NEGOTIATION OF TRANSIT RIGHTS. TURKS HAVE FULL SEABED RIGHTS IN BLACK SEA, OFF TURKISH ISLANDS IN NORTHERN AEGEAN AND ON SOUTHERN COAST. LIMITS BY GREEK ISLANDS COVERS ABOUT 20-25 OF TURKISH COAST.

- 10. IN DELIMITATION OF TERRITORIAL SEA BOUNDARIES FOR ADJACENT AND OPPOSITE STATES, CERTAIN SMALL ISLANDS MAY LEAD TO LOCAL INEQUITIES AND OBJECTIVE CRITERIA COULD BE DEVELOPED. SINCE THE NORMAL AREA IS SO SMALL, IT DOES NOT APPEAR TO BE EITHER ESSENTIAL OR LOGICAL TO ATTEMPT COMPLICATED RULES. IN GREEK/TURKISH CASE, EVEN IF ISLANDS REDUCED IN VALUE SO THAT QTE EQUIDISTANT UNQTE LINE LIES TWO THIRDS OF DISTANCE FROM TURKEY TOWARD GREEK ISLANDS, THE NET GAIN TO TURKEY WOULD BE LIMITED AND PROBABLY ONLY OF PSYCHOLOGICAL VALUE. EXCEPTION MAY OCCUR WITH THE DODECANESE WHICH ARE SMALLER THAN NORMAL AEGEAN ISLANDS AND MORE DETACHED FROM THE OTHER GREEK BASELINES.
- 11. COMPLICATIONS WILL DEVELOP IN THE ATTEMPT TO LIMIT ISLANDS SINCE 27 STATES (HODGSON P. 12) ARE TOTALLY INSULAR IN THEIR GEOGRAPHY. MOREOVER, ACCORDING TO PRELIMINARY SURVEY ALL COASTAL STATES POSSESS ONE OR MORE ISLANDS WITH POSSIBLE EXCEPTIONS OF ISRAEL AND JORDAN. OCEANIC ISLANDS, MOREOVER, CONSTITUTE APPROXIMATELY 7 OF WORLD LAND AREA TOTAL. RANGE IN SIZE FROM GREENLAND, LARGER THAN ALL BUT 11 COUNTRIES

OF WORLD, TO ROCKS. NUMBER ESTIMATED BETWEEN 500,000 AND A MILLION.

12. BEYOND TERRITORIAL SEA, ISLANDS ASSUME GREATER IMPORTANCE AS MOST SEAWARD POINTS ON THE BASELINE FOR THE DEVELOPMENT OF LIMITS. INFLUENCE IS PARTICULARLY GREAT ON EQUIDISTANT BOUNDARIES BETWEEN OPPOSITE AND ADJACENT STATES. IN SPITE OF NORTH SEA CASE FINDINGS, THEIR INFLUENCE FOR INEQUITY PROBABLY GREATEST IN AN OPPOSITE SITUATION. AS A CONSEQUENCE, CERTAIN STATE

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PRACTICE IN SEMI-ENCLOSED SEAS GRANTS ISLANDS SITUATED NEAR MID-SEA ONLY A TERRITORIAL SEA OF 12-MILES: THEY HAVE NO VALUE IN THE CONSTRUCTION OF EQUIDISTANT LINES.1 .-)) 8 )-,\$ 8, .8\$-SEA AFFECT AN EQUIDISTANT BOUNDARY FOR ONE QUARTER OF THE WIDTH OF THE SEA AND UP TO ONE-HALF THE LENGTH DEPENDING UPON DEMENTIONS OF THE SEA. ISLANDS INFLUENCE FAR MORE COMPLEX THAN IN TERRITORIAL SEA QUESTION AND REQUIRES GREATER STUDY AT THIS TIME. GEOGRAPHER'S PAPER DEVELOPS CRITERIA BASED UPON SIZE, POPULATION, ADJACENCY/PROXIMITY, AND POLITICAL STATUS. THE LAST-NAMED APPLIES ONLY IN A POSITIVE SENSE; A SMALL INDEPENDENT INSULAR STATE SHOULD NOT BE DENIED THE USE OF SMALL ISLANDS WHICH CONSTITUTE AN IMPORTANT ELEMENT OF THE STATE TERRITORY. THE CRITERIA MAY SERVE AS BASES FOR DISCUSSIONS. COPIES GIVEN TO ALL PARTICIPANTS AT LOS INSTITUTE (PROPERLY DISCLAIMED) AND TO SELECTED OFFICIALS IN GENEVA.

13. ISLANDS IN MID-OCEAN (NON-ADJACENT IN THE SENSE OF 400 MILES FROM NATIONAL TERRITORY) CREATE SPECIAL PROB-LEM ONLY IN REDUCTION OF INTERNATIONAL SEABED AREA. CANADIANS EXPLORING FORMULA FOR THE LIMITATION OF AREA ALLOCATED BASED UPON SIZE OF ISLAND. HODGSON LEFT COPY WITH DELEGATION ON HIS RETURN. THIS APPROACH COULD BE MOST DISADVANTAGEOUS TO U.S. AS OWNER OF LARGE NUMBER OF SMALL, UNINHABITED, DETACHED ISLANDS. SOME - HOWLAND, BAKER, JARVIS, KINGMAN, PALMYRA, JOHNSTON - SITUATED IN PROXIMITY TO HIGH COPPER-NICKEL NODULES IN CENTRAL PACIFIC. SINCE HAWAII LOGICAL SITE FOR REDUCTION OR REFINING OPERATIONS FROM ZONE, ASSURED SOURCE OF U.S. CONTROLLED NODULES COULD BE OF GREATEST IMPORTANCE TO U.S. INDUSTRY. MAY ALSO BE VITAL FOR THE PROTECTION OF THE INTERESTS OF THE TRUST TERRITORY WHICH COMPRISES SMALL AND DETACHED ISLANDS AND ISLETS. OTHER OWNERS, ARE U.K., JAPAN, FRANCE, PORTUGAL, CHILE, AUSTRALIA, NORWAY, SOUTH AFRICA, BRAZIL, AND NEW ZEALAND. 14. ISLAND QUESTION, OF COURSE, FURTHER COMPLICATED BY ARCHIPELAGOS, ATOLLS AND GENERAL QUESTION OF STRAITS AND THE PASSAGE THROUGH THEM.

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15. SPAIN POSSESSES SERIES OF SMALL ISLANDS EAST OF GIBRALTAR AND ALONG THE COASTS OF MOROCCO AND ALGERIA. THESE SMALL ISLETS RESIDUAL POSSESSIONS FROM DAYS OF COMBINED PORTUGUESE-SPANISH KINGDOM. INFLUENCE ON MOROCCO AND NIGERIA BOUND TO BE GREAT IF GIVEN FULL WEIGHT FOR THE CONTINENTAL SHELF/ECONOMIC SEABED ZONE. EVEN IN THESE INSTANCES, EQUITY SEEMS TO FAVOR A FULL TERRITORIAL SEA BUT LITTLE EFFECT, IF ANY, ON THE SUB-

MARINE RESOURCES BEYOND THESE NARROW LIMITS.

16. ON GENERAL POLICY QUESTION, IT WOULD APPEAR THAT U.S. COULD SUPPORT THE USE OF THE LARGER ISLANDS (MOST GREEK ISLANDS) AS FULL TERRITORIAL SEA BASEPOINTS AND ATTEMPT TO CONVINCE THE TURKS THAT FREE TRANSIT IS MOST VITAL ISSUE. SINCE MOST FRINGING GREEK ISLANDS ARE WITHIN 12 MILES OF TURKISH COAST, AN EXTENSION OF 12 MILES FOR TERRITORIAL SEA HAS LITTLE OR NO EFFECT ON TURKEY TO ALTER THE CURRENT STATUS QUO. ALTHOUGH ISSUE MAY BE POLITICAL RATHER THAN RELATED TO SEABEDS QUESTION, TRANSIT APPEARS TO BE THE ONLY ISSUE WHICH WOULD BE ADVERSELY AFFECTED OR CHANGED MARKEDLY BY CURRENT SEABEDS DISCUSSIONS.

17. CORRIGENDA.

PAGE/LINE FROM TO/ADD

1/21 NEW SHELF LIMITS AS NEW SHELF LIMITS EXIST AS

2/13 A PARTICULAR AREA OF METERS A PARTICULAR AREA 300 METERS

3/10 PHENOMENIA PHENOMENA

10/11 FOR THE THEIR LOW FOR THEIR LOW

18/1 CONTIGUOUT CONTIGUOUS

21/20 QTE SPECIAL CIRCUMSTAN- QTE SPECIAL SECRET

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CES CIRCUMSTANCES.UNQTE

22/9 MEDIAN MERIDIAN

30/13 IN NUMBERLESS ARRANGEMENTS IN NUMBERLESS

ARRANGEMENTS)

33/13 DEVISIVE DIVISIVE

33/22 ACCRUE ACCRUE,

36/NOTE 2 KUSUMAOTMADJA KUSUMAATMADJA

41/14 PROVIDES THE MAJOR PROVIDES FOR THE

MAJOR

43/8 OFFSHORE ISLANDS. OFFSHORE ISLANDS AND

A MAINLAND.

45/9 40 NAUTICAL MILES 48 NAUTICAL MILES

VITAL 49/7 VITA

54/13 DTERMINE DETERMINE

61/16 (SEE FIG. 6. (SEE FIG. 6.)

63/20-L SEE FIGURE 7 ... ( SEE FIGURE 7 ...)

76/4 WHICH IS WHICH IS SITUATED

> APPROXIMATELY 12 MILES FROM THE MAIN-LAND, HAS NOT BEEN USED AS BASE-

POINTS FOR THE

BOUNDARY DELIMITATION. THE EFFECT OF THESE

**ISLANDS** 

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78/NOTE 1 1. PANTELLERIA: 32 SQ.

> MI., C. 10,000 POP., ISLE; LINOSA:

2 SQ. MI., C. 400 POP., ISLE; LAMPEDUSA: 8 SQ. MI., C. 3,5000 POP., ISLE; LAMPIONE: LESS THAN 1 SQ. MI., IS-LET.

79/TABLE DISTANCE DISTANCE

MALAYSIA INDONESIAN MALAYSIA

**ISLANDS** 

86/10 CARRANT WAGRANT

ROGERS UNQTE RUSH

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## Message Attributes

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